IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 179 OF 2004

S T A T E
through Public Prosecutor
High Court of Bombay at Panaji,
Panaji. ... Applicant

versus

Bruno Fernandes,
s/o Mr. Marcus Fernandes,
House No.900,
Naikawado, Aldona,
Bardez, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. E. Heredia, Advocate for the Respondent.

ORAL ORDER

CORAM : N. A. BRITTO, J.

DATE : 9TH SEPTEMBER, 2004.

The State has approached this Court under Section 439 (2) of the Code of Criminal Procedure, 1973, for the cancellation of the anticipatory bail granted to the accused by Order dated 18th June, 2004, of the learned Additional Sessions Judge, incharge of Sessions Court, Panaji, in Crime No.79 of 2004 under Sections 434, 437, 380 of the Indian Penal Code.

2. The facts leading to the filing of the application for anticipatory bail by the accused and the State approaching this Court for cancellation of the said anticipatory bail are as follows:-

> "Manmoy Raul, son of Udaynath Raul, who was admittedly an employee of the accused filed on or about 8-6-2004 a complaint against him, inter alia, alleging that from June, 2000, he was residing in a flat namely Flat No.3, 2nd floor of Sun Beam Apartments, at Khobrawado, Calangute, pursuant to an agreement with one Jimmy Belihomji and that on or about 11-5-2004 he had locked the said flat and proceeded to Delhi but when he returned on 7-6-2004 he found that his articles like T.V, washing machine, fridge, etc. valued at about Rs.85,000/- were missing. It was his allegation that some unknown culprits in his absence broke open the lock of the flat and committed theft of the said articles'.

3. The accused on or about 16th June, 2004, filed an application for anticipatory bail before the Sessions Court, Panaji, which came to be decided by Order dated 18th June, 2004, by the learned Additional Sessions Judge, Panaji.

4. In admitting the accused to anticipatory bail, the learned Additional Sessions Judge, Panaji, came to the conclusion that the

documents prima facie indicated that the accused had handed over the possession of the flats to the owner through his Attorney on 16th May, 2004. The learned Additional Sessions Judge, Panaji, further observed that the Attorney of the said Jimmy Belihomji, namely, one Jonas Correia indicated that the accused had informed him that he had vacated the flat and had asked him to take possession of the same. The learned Additional Sessions Judge, Panaji, therefore, came to the conclusion that the dispute had appeared to be over the possession of the said flat and, therefore, prima facie of a civil nature.

5. At the time of hearing of this application, Mr. S. N. Sardessai, learned Public Prosecutor, on behalf of the State, and Mr. E. Heredia, learned Counsel on behalf of the accused, have been heard.

6. Although, the said Complainant Manmoy U. Raul, had alleged in the complaint that he had a contract of 5 years with Jimmy Belihomji, it is conceded by Mr. Sardessai, learned Public Prosecutor, that the said Manmoy Raul was only an employee of the accused and was residing in the said flat and it is the accused who had an agreement with the said Jimmy Belihomji. The accused has produced a copy of an agreement dated 1st June, 2002, by which it is he who had obtained the said two flats including the said flat No.3 from the said Jimmy and the accused was permitted to reside in one of the said flats as his employee. The accused has also produced a copy of

memo of surrender of possession of the said flats on 16th May,2004. There is also no dispute that the said Manmoy Raul had ceased to be an employee of the accused from 30th January, 2004. One fails to understand as to how the Police handed over the possession of the flat to the said Manmoy Raul even without verifying the contents of his complaint particularly as regards to his Lease/Licence agreement, with the said Jimmy Belihomji. In my view, the learned Additional Sessions Judge, Panaji, has rightly observed that the dispute was essentially regarding the possession of the flat between the said Complainant, the accused and the said Jimmy Belihomji, possession of which was taken by the accused from the said Jimmy Belihomji and which again was returned to him through his Attorney one Jonas Correia.

7. In the background of the facts stated as well as on account of unexplained delay in approaching this Court, this is not a fit case to cancel the anticipatory bail granted to the accused by the learned Additional Sessions Judge, Panaji. In my view, the learned Additional Sessions Judge, Panaji, considering the facts of the case, rightly exercised her discretion in admitting the accused to anticipatory bail. I find there is no merit in this application. The same is, therefore, hereby dismissd.

N. A. BRITTO, J.

RD.